

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COMMONWEALTH OF
PENNSYLVANIA,

Plaintiff,

v.

JOHN J. BUCKSHAW

Defendant.

Civil Action No. 05-5977

MEMORANDUM / ORDER

June 8, 2006

This court has received defendant's "Motion and Order to File Notice of Removal without a Fee" (Docket # 1). Because 28 U.S.C. § 1914 does not authorize the court to require a fee in connection with the filing of a notice of removal of a criminal action, it is hereby ORDERED that the motion is GRANTED. The clerk of court shall accept defendant's "Second Notice of Removal" for filing without requiring a filing fee.

Examination of the "Second Notice of Removal," however, makes it clear that the matter defendant is attempting to remove to this court is not removable. Because the matter sought to be removed is a criminal prosecution, and because the defendant is not an agency or officer of the United States, or a person deriving title to property from such officer, or a member of the armed forces, the only possible basis for removing this case would be 28 U.S.C. § 1443. However, "a removal petition under Section 1443 must allege a specific right under a law in terms of racial equality and a denial of that right in

state court.” *Commonwealth of Pennsylvania v. Gittman*, 451 F.2d 155, 156 (3d Cir. 1971). Because defendant’s “Second Notice of Removal” does not do so, this court lacks subject matter jurisdiction over this case and must dismiss it pursuant to Fed. R. Civ. P. 12(h)(3). It is therefore further ORDERED that this case is REMANDED to Philadelphia Municipal Court. The clerk of court is directed to transfer this case to that court.

BY THE COURT:

/s/ Louis H. Pollak

Pollak, J.